

APPEAL NO. 032790
FILED DECEMBER 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 1, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 5%. The claimant appealed, arguing that other medical evidence greatly outweighs the IR assigned by the designated doctor, and argues that the designated doctor did not assess the IR according to the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). The respondent (carrier) responded, urging affirmance and arguing that the decision and order are supported by sufficient evidence.

DECISION

Affirmed.

The parties stipulated that the claimant reached maximum medical improvement (MMI) as of April 25, 2003, and that Dr. L is the Texas Workers' Compensation Commission-selected designated doctor assigned to determine the claimant's MMI date and IR. The hearing officer did not err in giving presumptive weight to the designated doctor's report, and in determining the claimant's IR in accordance with that report. The difference in the ratings of the claimant's treating doctor and the designated doctor is attributable to the fact that the designated doctor placed the claimant in Diagnosis-Related Estimate (DRE) Category II and assigned him a 5% IR from Table 73 of the AMA Guides, while the claimant's treating doctor placed the claimant in DRE Category IV and assigned a 25% IR. The claimant's treating doctor opined that the flexion/extension x-rays of February 24, 2003, which were digitized, found the claimant had 3.5 mm retrolisthesis at the C4 level. We cannot agree that the claimant's treating doctor's report constitutes the great weight of the other medical evidence contrary to the designated doctor's report. Rather, this is a case where there is a difference of medical opinion between the designated doctor and the claimant's treating doctor as to whether the claimant is properly rated under DRE Category II or Category IV. The designated doctor noted that the electrodiagnostic studies have not shown specific evidence of cervical radiculopathy and he reviewed two other reports of flexion and extension radiographs in addition to cervical extension radiographs taken in his own office on May 20, 2003. The designated doctor reported that the cervical flexion and extension radiographs of the claimant's cervical spine taken by him, showed approximately 1 mm of anterior/posterior translation at the C4-5 level with flexion and extension. We have long held that by giving presumptive weight to the designated doctor, the 1989 Act provides a mechanism for accepting the designated doctor's resolution of such differences. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers' Compensation Commission Appeal No. 001526, decided August 23, 2000. We have held that a "great weight" determination requires

more than a mere balancing or preponderance of the evidence; that no other doctor's report, including the treating doctor's report, is accorded the special presumptive status; and that the designated doctor's report should not be rejected absent a substantial basis for doing so. Texas Workers' Compensation Commission Appeal No. 960897, decided June 28, 1996. Further, the AMA Guides state that the loss of integrity is defined as an antero-posterior motion or slipping of one vertebra over another greater than 3.5 mm for a cervical vertebra.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **GREAT AMERICAN ALLIANCE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge